

**PT 00-20**

**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**AFRICAN WORLD  
RESEARCH INSTITUTE,  
APPLICANT**

**v.**

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

**No: 98-PT-0095  
(97-16-0760)**

**P.I.N: 20-25-302-003**

**Robert C. Rymeck,  
Administrative Law Judge**

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**FINAL ADMINISTRATIVE DECISION**

**APPEARANCE:** Mr. Richard Glickman, Attorney at Law, on behalf of the African World Research Institute (hereinafter referred to as the "applicant").

**SYNOPSIS:** This proceeding raises the following issues: (1) whether applicant qualifies as an "institution of public charity" within the meaning of Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1, *et seq*; and, (2) whether real estate identified by Cook County Parcel Index Number 20-25-302-003 (hereinafter the "subject property") was "actually and exclusively used for charitable or beneficent purposes" within the meaning of Section 15-65 during the 1997 assessment year.

The underlying controversy arises as follows:

Applicant filed a Real Estate Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on March 3, 1998. The Board reviewed applicant's complaint and recommended to the Illinois Department Of Revenue (hereinafter the "Department") that the requested exemption be denied (Dept. Group Ex. No. 1). The Department's Office of Local Government services reviewed the Board's recommendation and subsequently issued its determination in this matter on August 27,

1998. Said determination found that the subject property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 2).

Applicant filed a timely appeal to the Department's determination and subsequently presented evidence at an evidentiary hearing that was held on November 4, 1999. Following the hearing, Administrative Law Judge Robert C. Rymeck issued, on January 12, 2000, a Recommendation for Disposition, recommending the Department's initial determination herein be reversed.

Upon due consideration, I have concluded the underlying recommendation of the ALJ cannot be accepted. That recommendation contains Findings of Fact (hereinafter "findings") and Conclusions of Law (hereinafter "conclusions"). However, for the following reasons, I find that the record adduced at hearing does not support at the ALJ's findings as to applicant's financial structure and its use of the subject property. Nor does the record support the ALJ's overall conclusions, which posit that applicant satisfies the statutory exempt ownership and exempt use requirements. Accordingly, I reject such findings and conclusions and, where appropriate, replace them with those set forth below.

When writing this final decision, I remain mindful of my responsibilities to the taxpayers as well as to the State. This decision is based solely on competent evidence produced at the hearing and those legal conclusions which can fairly be drawn from the evidence. I have reviewed with particularity all evidence offered by the taxpayer and admitted into evidence by the ALJ. Additionally, I have apprised myself of the pertinent sections of law pertaining to the issues presented at the hearing. I have considered the entire transcript of record, including the testimony of witnesses and the argument of counsel.

A sufficient record of proceedings was made to permit the appropriate review and issuance of this final administrative decision pursuant to 86 Ill. Admin. Code ch. I, sec. 200.165 (1996). *See also*, Highland Park Convalescent Home v. Health Facilities Planning Comm., 217 Ill. App.3d 1088 (1991). Accordingly, I am including in this final

decision specific reasons for my rejecting the aforementioned findings and Conclusions and substituting in their place any Findings of Fact and/or Conclusions of Law that are necessary to support this decision.

#### I. Findings As To Applicant's Financial Structure

The ALJ found that "[t]he applicant's annual revenues of \$1,200 were derived entirely from public and private donations." Recommendation, p. 3. Citations to the record disclose that the ALJ based this finding solely on the testimony of applicant's president, David Beverly.

Mr. Beverly did provide a cursory synopsis of applicant's financial structure during the course of his testimony. (*See*, Tr. pp. 22-23; 32). However, applicant did not introduce any financial statements to support this overview even though Mr. Beverly specifically admitted that applicant maintained such financial records in the normal course of its business. (Tr. p. 32).

It is well established in Illinois that the party seeking exemption bears the burden of proving, by clear and convincing evidence, that its property falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). In this context, applicant's burden consists, *inter alia*,<sup>1</sup> of proving by appropriate evidence that it in fact: (1) derives its funds "mainly from public and private charity" Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968); and, (2) holds any funds it so derives "in trust for the objects and purposes" expressed in its charter." *Id.*

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1. For analysis as to the other elements of applicant's burden of proof, (i.e. those that do not pertain to its financial structure), see, Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

Mr. Beverly's cursory testimonial synopsis of applicant's financial structure, standing alone, does not rise to the level of clear and convincing evidence necessary to sustain its burden as to the above-identified elements. Applicant might have cured this evidentiary deficiency if it had submitted appropriate supporting financial documents. Such documents were, per Mr. Beverly's admission, within applicant's custody and control at the time of the hearing. Hence, applicant's failure to introduce them is, under the above rules, tantamount to a failure of proof.

Based on the foregoing, I reject the ALJ's finding as to the source of applicant's revenues. Moreover, the cursory nature of this record does not permit me to replace that finding with one of my own. Therefore, I decline to make a such a substitute finding and conclude only that applicant failed to sustain its burden of proving that its financial structure conforms to that of an "institution of public charity."

## II. Findings As To Applicant's Use of the Subject Property

The ALJ further found that "[d]uring 1977, the applicant used the subject property solely for free 'classes' which were offered every weekend and occasionally on weekdays." Recommendation, p. 3. Citations to the record disclose that the ALJ also based this finding solely on Mr. Beverly's testimony, which, in substance indicated that: (1) applicant used the subject property for "strictly educational" purposes; (2) such purposes consisted of offering "classes," or dependency avoidance programs, at the subject property; (3) applicant presented these programs<sup>2</sup> every Sunday, and occasionally on Saturdays, throughout the tax year in question; and, (4) applicant generally did not

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2. I deliberately refrain from using the word "classes" to describe applicant's programs throughout the remainder of this Decision because applicant has not raised the issue of whether the subject property qualifies for exemption under Section 15-35 of the Property Tax Code which, in pertinent part, exempts "all property of schools." As applicant has not raised that issue, I shall deem it waived herein.

use the subject property during the week except if it received a special request to present one of its programs. Tr. pp. 18-19; 30-31

Mr. Beverly's statement that applicant uses the subject property for "strictly educational" purposes is but his own conclusory interpretation of the programs that applicant presents at the subject property. Such a conclusory statement, standing by itself, fails to satisfy the clear and convincing evidentiary standard that applicant must meet in order to sustain its burden of proof.

Mr. Beverly also indicated that applicant offered its programs "every Sunday ... and ... sometimes on Saturdays" during 1997. (Tr. p. 19). Mr. Beverly clarified his use of the word "sometimes" by indicating that applicant presented between 20 and 25 Saturday programs during 1997. Tr. p. 30. He further stated that applicant did not use the subject property during the week "unless" it received some sort of special request to present one of its programs. *Id.* Therefore, the best that can be said is that the property was used by applicant 1½ times per week, thereby making its use of the property incidental to its otherwise vacant condition.

Doubts as to primary use must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968). Accordingly, for all the aforementioned reasons, I conclude that the record does not support the ALJ's finding as to the frequency with which applicant offered its programs at the subject property.

This finding indicated, in relevant part, that applicant offered such programs "every weekend ...[.]" Recommendation, p. 3. However, the evidence demonstrates that

this was an overly broad characterization of the testimony on which the ALJ based this finding. Consequently, I reject the ALJ's finding and replace with the following:

8. Applicant presented a series of free programs at the subject property. It presented these programs:
  - A. Every Sunday throughout 1997;
  - B. On 20 to 25 Saturdays in 1997; and,
  - C. On an occasional weekday basis, but only if it received a special request to make a presentation.

Tr. pp. 18-19; 30-31.

### III. Conclusions of Law

#### A. Conclusions as to Applicant's Exempt Status

The ALJ relied on People ex rel. Hartigan v. National Anti-Drug Coalition, et al, 124 Ill. App.3d 269 (1<sup>st</sup> Dist. 1984) (hereinafter "Hartigan") in reaching his conclusion that applicant qualifies as an "institution of public charity" within the meaning of Section 15-65. Recommendation, p. 6. In Hartigan, the court observed that:

The courts of this State are in accord in applying a broad legal definition of 'charity' to include almost anything that tends to promote the improvement, well-doing and well being of social man. [Citation omitted]. Moreover, charitable organizations may include organizations whose primary purpose is not to provide money or services for the poor, the needy or other worthy objects of charity, but to gather and disseminate information about and to advocate positions on matters of public concern.

Hartigan, *supra* at 274.

The Hartigan court made this observation in the context of holding that the appellant Foundation was subject to certain registration requirements contained within

the Charitable Trust Act.<sup>3</sup> That Act is, per the court’s analysis, designed to “assist the Attorney General *in carrying out his common law powers and duties* to enforce charitable trusts and see to the application of their funds to their intended charitable uses.” (emphasis in original). Hartigan, *supra* at 275. To that end, it is a statute of maximum inclusion, or one that provides the Attorney General with the broadest possible range of tools for discharging the police powers entrusted to him. *Id.*

The same cannot be said of Section 15-65 and all of the other exemption provisions contained within the Property Tax Code. These provisions are statutes of minimal inclusion, as they arise from the following Constitutional mandate:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Ill. Const. 1970, Article IX, § 6.

This Constitutional provision operates as a limit on the power of the General Assembly to exempt property from taxation. Hence, the General Assembly is not allowed to broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). As a result, and because property tax exemptions cause harm to public funds by imposing lost revenue costs thereon, statutes conferring such exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40

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3. The Charitable Trust Act was contained in Ill. Rev. Stat. ch. 14, ¶ 51 *et. seq.* at the time Hartigan was decided. It is presently found in 760 ILCS 55/1 *et seq.*

Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

The Charitable Trust Act is not subject to the aforementioned constitutional limitations. Nor are its provisions designed to protect public funds from injurious lost revenue costs. Rather, the Charitable Trust Act is meant to be broadly construed so as to provide the Attorney General with maximum flexibility in enforcing the State's plenary police powers in the arena of ensuring the fiscal integrity of charitable trusts. Hartigan, *supra*.

Employing a broad, rather than narrow, definition of "charity" seems an appropriate mechanism for providing such flexibility. Such a definition is not, however, a proper instrument for preserving the constitutional limitations on property tax exemptions. Nor is it suitable for protecting public revenues from the lost revenue costs that such exemptions impose. Consequently, I conclude that the ALJ's reliance on Hartigan is erroneous as a matter of law. For this reason, and because applicant failed to prove that its financial structure is consistent with that of an "institution of public charity," the ALJ's conclusion that the subject property was in exempt ownership during the 1997 tax year is hereby reversed.

#### B. Conclusions as to Applicant's Exempt Use

Real estate is not subject to exemption under Section 15-65 unless it is both in exempt ownership and in exempt use. 35 ILCS 200/15-65; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 157 (1968). The above analysis demonstrates that applicant does not satisfy the exempt ownership requirement as a matter of law. Therefore, I do not believe it necessary to engage in protracted analysis of the exempt use



requirement. However, I would briefly note that my finding, *supra*, at p. 6, and the analysis on which it is based, leave me unable to conclude that the subject property was in exempt use during 1997.

The constraints on factual inferences which I have repeatedly discussed throughout this Decision require that I place this finding in a context that supports taxation. That context is achieved by recognizing that the word “exclusively,” when used in Section 15-65 and other property tax exemption statutes, means the primary use of real estate, and not any incidental or secondary uses thereof. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); MacMurray College v. Wright, 38 Ill.2d 272, 279 (1967).

Here, applicant’s Saturday and weekday uses of the subject property were periodic when compared with applicant’s Sunday uses thereof. Because such periodic uses must be as incidental, the most applicant has proven is that it had actual use of the subject property for but 1½ days per week throughout the tax year in question.

Applicant’s actual use, under terms of the applicable statute<sup>4</sup> and at common law, is determinative of whether the subject property was “exclusively used” for exempt purposes. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). The fact that applicant used the property little more than once per week raises the tax-supporting inference that said property was primarily vacant, and therefore, not actually used for any purpose whatsoever,<sup>5</sup> throughout both the remainder of the week and the

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4. Section 15-65 provides, in pertinent part, for exemption of all properties “... *actually* and exclusively used for charitable or beneficent purposes ...[.]” 35 **ILCS** 200/15-65.

5. For further analysis as to why vacancy constitutes a non-exempt use, *see*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983).

entire 1997 tax year. Such an inference, while contrary to the ALJ's conclusion of exempt use, is required by applicable law. Therefore, I find the ALJ's conclusion to be erroneous as a matter of law and reverse it.

#### IV. Summary

In summary, the foregoing analysis demonstrates that: (1) the ALJ's finding as to the source of applicant's revenues, which was based solely on testimonial evidence, does not justify a larger, yet legally necessary conclusion that applicant's financial structure conforms to that of an "institution of public charity[;] (2) the ALJ's finding as to the applicant's use of the subject property is based on an excessively broad interpretation of the testimonial evidence; and, (3) the ALJ's use of the "broad legal definition of charity" articulated in People ex rel. Hartigan v. National Anti-Drug Coalition, et al, 124 Ill. App.3d 269 (1<sup>st</sup> Dist. 1984), directly contravenes both the constitutional limitations on property tax exemptions and the rules of strict statutory construction derived therefrom. Therefore, the ALJ's Recommendation that the subject property should be exempt from 1997 real estate taxes under Section 15-65 of the Property Tax Code is hereby rejected on grounds that it is contrary to law.

WHEREFORE, for all the above-stated reasons, it is my Final Administrative Decision that real estate identified by Cook County Parcel Index Number 20-25-302-003 not be exempt from 1997 real estate taxes under Section 15-65 of the Property Tax Code.

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Glen L. Bower

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Date

Director of Revenue